VIRGINIA LAW REGISTER.

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THE Fourteenth Annual Meeting of the Virginia State Bar Association will take place at the Hot Springs of Virginia, August 5-7, 1902. The principal address will be delivered by Hon. James B. Gantt, of Jefferson City, Missouri, sometime a member of the Supreme Court of that State. His subject will be "The *Nisi Prius* Judge in our Judicial System." Judge Gantt enjoys an enviable reputation as a lawyer and judge, and we may be sure of an address worthy of both speaker and occasion.

The attractions of the Hot Springs are known by pleasant experience to the members of the Association, and a large gathering is anticipated of those who

> "Strive mightily as adversaries do in law,
> Yet eat and drink together."

THE National House of Representatives has passed a bill amending the Bankruptcy Act of 1898 in fifteen particulars, to meet alleged defects which experience has shown to exist. The most important amendment is one to define preference, to meet the Supreme Court decision in the case of *Pirie* v. *Chicago Title and Trust Company,* 182 U. S. 438.

Four additional grounds for refusing to discharge in bankruptcy are added: First, obtaining property on credit on materially false statements; second, making a fraudulent transfer of property; third, having been granted or denied a discharge in bankruptcy within six years; and fourth, having refused to obey the order of the court, or refusal to answer material questions approved by the court. An effort was made to repeal the entire Bankruptcy Act, but was overwhelmingly defeated.

WE note with approval the ruling of a New York judge upon a motion by defendant in a divorce suit to dismiss without costs the

proceedings, the parties having become reconciled. The motion was made by counsel other than those of record. Justice Blanchard held that before an order of dismissal could be entered, the fee of the plaintiff's counsel must first be paid, saying:

"Although the law approves of everything that tends to bring harmony into domestic life, yet the court will not allow a lawyer who has done his duty to be cheated out of his fees. I will order the suit dismissed on payment of $50 to the lawyer. Otherwise I shall refuse to do so."

The *New York Sun* very appropriately publishes the foregoing under the heading "Pay Lawyer First—People who grab the poles of the law's batteries can't let go gratis."

THE longer one studies it, the greater appears, from every standpoint, except that of the supply-man (and indirectly from his also), the unwisdom of section 2445 of the Code of Virginia, in so far as it gives to persons furnishing supplies to a *manufacturing* company a prior lien therefor upon the personal property of the company other than that forming part of its plant. Its effects are two-fold —first, to give a preference to supply-creditors over others whose claims are as worthy of consideration, contributing just as much to the prolongation of the life of the enterprise; and second, and most important, to strike a vital blow at the financial credit of such companies, both current and by way of mortgage.

The statute itself, as amended, is complex and confused, abounding in general statements immediately thereafter qualified, and concluding with a proviso which would at first glance seem to take away the lien conferred by what precedes it. A most rigid scrutiny of the provisions of the statute is necessary to the ascertainment of the legislative intent.

The second of its effects above mentioned would seem, if fully comprehended by the legislature, to be sufficient to secure its modification in this respect. There is no objection to the theory of its provisions regarding either labor or supply claims against transportation and mining companies, or labor claims against transportation, mining and manufacturing companies. But the retention upon our statute books of a provision which necessarily results in the paralysis of the commercial credit of manufacturing companies, and causes their applications for bank or other loans, upon the faith

of what would otherwise be a first class security, to be promptly rejected, seems highly objectionable.

Illustration is often the clearest exposition. The following actual case is submitted: A large manufacturing company in Virginia had a contract with a transportation company to supply it with a finished product to the value of half a million of dollars, the payments to be made in instalments of $20,000, each upon the approval of the work in its respective instalments by the inspector of the transportation company. The manufacturing company, being in need of ready money for the carrying on of this and other work, applied to a local bank for the loan of $100,000, offering, as security, an assignment of the contract to the bank, with notice to the transportation company, and with the right to collect the instalments. It was understood, however, that the bank would wait until the last five instalments became due and payable for the satisfaction of its demand.

The legal questions involved were referred by the bank to its counsel, who advised that the proposed "security" was no security at all, in that months, if not years after the loan of the money, a supply-creditor, with a running account covering an indefinite period of time, might "within ninety days after the last item of his bill becomes due and payable," file his lien for supplies furnished the company, not only for the work done under this contract, but for supplies for any and all work whatever and whenever done by it during the life of the contract and before all of the payments contemplated by it should have been made. Such a supply-creditor would only have to perfect his lien and demand of the transportation company, in the case stated, the payment to him of the instalments pledged to the bank; for thereafter the transportation company could make payment to the bank only at its peril, because by the terms of section 2485, the supply man has the "prior lien," and the bank will be deemed to have taken the assignment subject to all labor and supply claims coming within the terms of this statute, that might thereafter be asserted against the assignor.

There could be but one result of such a condition of law and facts: The application for the loan was declined and the manufacturing company was left to the difficult task of securing credit otherwise than upon the faith of its assets.

Precisely the same condition confronts a manufacturing corporation which desires to establish itself by placing its first-mortgage

bonds upon the market. During the last term of the Law and Equity Court of Richmond, the holders of $50,000 of the first mortgage bonds of an insolvent manufacturing corporation were postponed in the division of its slender assets to the payment of supply men whose claims matured many years after the recordation of the mortgage. With such an application of *caveat emptor,* the wonder is that any one can be found even to ask a money-lender to accept as a security a "first mortgage," which may as well as not prove to be a hundred-and-first.

It is manifest that the manufacturing interests of the State are those principally interested in securing a repeal of this provision of the statute in question. The banks and other lenders are secondarily interested, in that, by the statute, they are excluded from a legitimate field for the investment of their moneys. But the public generally is interested also. It is to the interest of the State that industries like these, giving, as they do, employment to thousands and causing a logical quickening of trade, wholesale and retail, be encouraged in every way possible. This would seem to be class legislation of the most pronounced sort, and while one may see clearly why, from a politico-legislative standpoint, as well as *ex æquo et bono,* the claims of laborers and employees generally receive careful attention from legislatures, it is not so apparent as regards supply-men.

From the standpoint of the justice of the legislation alone, there is no reason why a supply-man should receive payment in full of his claim before a company which insures those supplies in an unfinished or finished state. All concern the life of the company and the preservation of its integrity. Nor is there any good reason why the supply claim should be recognized in full, and that of the man who loaned the company money for the conduct of its business be postponed. The money is just as necessary to the operation of the "enterprise." Or, if there is any such crying need for the abolition, as to one favored class, of the old rule of equality being equity, why the difference between manufacturing *companies* and *partnerships*? Why should the supply-man be allowed to share only ratably with the other creditors of Smith & Jones, manufacturers, when, as a creditor of the Smith-Jones Manufacturing Company, he would be paid first?

These and like considerations suggest the suspicion at least that the statute was hastily drafted. Our Court of Appeals, in *Vir-*

ginia Development Company v. *Crozer Iron Company,* 90 Va. 134, while upholding the law, says that the meaning of the legislature is "rather awkwardly expressed." It would seem also that its certain consequences and inequalities were not foreseen and could not have been carefully considered.

The statute abounds in the possibility of the raising of the gravest questions. Thus, if the lien as to transportation companies is prior to any "mortgage, deed of trust, *sale,* hypothecation or conveyance executed since March 21, 1877," why is not the finished product, paid for and delivered, liable to be taken away from the vendee and subjected to the satisfaction of this "prior lien," accruing for supplies furnished long after its completion and delivery to him? For it occupies precisely the same position under the statute as did the deed of trust executed January 10, 1890, and recorded February 24, 1890, but which was adjudged in *Virginia Development Co.* v. *Crozer Iron Co., supra,* to be inferior to a supply lien filed February 23, 1891.

An examination of the legislation of the different States as set forth in Jones on Liens, section 1636 *et seq.,* justifies the statement that in this respect Virginia occupies an extreme position. The statutes of almost all the states give employees and supply-men liens against transportation companies, while those of Kentucky give to employees of manufacturing establishments, whether incorporated or not, a lien superior to any mortgage or other incumbrance; but we have failed to find another State with a statute, the scope of which approaches that of Virginia.

Certainly, there seems to be good ground for redrafting the Act—striking out the words which give to supply claims priority over those of first mortgage bondholders—narrowing the meaning of the word "supplies," or broadening it so as to include claims just as worthy, such as insurance premiums or current bank discounts. The wiser course would seem to be that of eliminating entirely the provisions of the Act as to manufacturing companies—an ill-advised act of grace to a single class of creditors, the necessary result of which is to deprive the infant industry of the financial oxygen without which it must perish, or, at the least, suffer a substantial and continuing impairment of its vitality.